

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEATRICE RUSIE,

Plaintiff,

No. 15-13282

v.

District Judge Nancy G. Edmunds
Magistrate Judge R. Steven Whalen

MACOMB COUNTY COMMUNITY
HEALTH,

Defendant.

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REPORT AND RECOMMENDATION

On September 16, 2015, Plaintiff Beatrice Rusie filed a *pro se* civil complaint against Macomb County Community Health. To date, no waiver of service has been received pursuant to Fed.R.Civ.P. 4(d), nor has any proof of service been filed, showing proper service of the Summons and Complaint on Defendant. Dispositive matters—which would include dismissal of the complaint—have been referred to me under 28 U.S.C. § 636(b)(1)(B). Because of the failure of service, and in accordance with Fed.R.Civ.P. 4(m), I recommend that the complaint be DISMISSED WITHOUT PREJUDICE.

DISCUSSION

Under Fed.R.Civ.P. 4(m), as it was in effect at the time this complaint was filed, service of a summons and complaint was required to be made upon a defendant within 120 days after filing the complaint¹, otherwise,

“...the court— upon motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good

¹ As of December 1, 2015, the time for service was reduced to 90 days.

cause for the failure, the court must extend the time for service for an appropriate period.

On April 25, 2016, I ordered the Plaintiff to show cause “why her complaint should not be dismissed without prejudice for failure to timely serve Defendant Macomb County Community Health” [Doc. #5], thus giving her the opportunity to show good cause and to benefit from an extension of time for service. I ordered her to show cause in writing on or before May 23, 2016. That date has come and gone, and Plaintiff has not filed a response to the show cause order.

Having given the Plaintiff notice that her case was subject to dismissal, Rule 4(m) provides that the Court must either dismiss the action or order that service be made within a specified time. It has been eight and one-half months since Plaintiff filed her complaint, and she has not seen fit to respond to my April 25, 2016 show cause order. Given this passage of time and Plaintiff’s lack of attention to her case, I see little value in extending the time for service. It is appropriate, therefore, to dismiss her complaint without prejudice.

CONCLUSION

I recommend that, under Fed.R.Civ.P. 4(m), Plaintiff’s complaint be DISMISSED WITHOUT PREJUDICE.

Any objections to this Report and Recommendation must be filed within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. §636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this

Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/R. Steven Whalen

R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Date: May 31, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on May 31, 2016, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla

Case Manager to the
Honorable R. Steven Whalen